

COUNTY OF YORK

MEMORANDUM

DATE: November 24, 2003 (BOS Mtg. 12/2/03)

TO: York County Board of Supervisors

FROM: James O. McReynolds, County Administrator

SUBJECT: Application No. ZT-80-03, York County Planning Commission –
Chesapeake Bay Preservation Area Regulations

This application has been sponsored by the Planning Commission and proposes various amendments to Section 24.1-372, EMA – Environmental Management Area Overlay District of Chapter 24.1- Zoning (York County Code) to reflect changes in the Chesapeake Bay Preservation Area regulations promulgated by the Chesapeake Bay Local Assistance Board (CBLAB).

The proposed amendments are necessary to bring the County's Chesapeake Bay provisions into conformance with the regulations and policy guidance adopted by CBLAB. CBLAB's policy guidance was not finalized until September 15, 2003, thus delaying staff's ability to finalize a proposal for consideration. In accordance with the state regulations, localities are required to have their ordinances updated and adopted by December 31, 2003.

The proposed ordinance provisions and the regulatory changes on which they are based are described in the attached summary. As noted, most of the changes are mandatory in order to bring York County's requirements into compliance with the new state regulations. The several that are not (ordinance reorganization, separate standards/guidelines document, yard requirements measured from buffer, and the civil penalties) are recommended by the Planning Commission staff for the reasons noted in the summary.

The State-mandated changes dealing with perennial streams have the potential to significantly impact development design and layout. Although the staff recommends that the effective date be delayed to the deadline, which should allow projects in the conceptual phase to be appropriately adjusted, there will be other project proposals which are about to be submitted, or which have already been submitted but not yet approved, that could require significant design adjustments to comply with the new RPA Buffer requirements. As has been the case in the past when there are potential impacts such as this, staff recommends that the adopting ordinance define the rules and guidelines that will apply to plan proposals "in the pipeline." The following recommendation is offered for the Board's consideration:

- Site Plans and Subdivision Plans in the Review Process as of the Effective Date: Plans in the review process and accepted for review prior to the effective date of the Ordinance will not be subject to the revised Ordinance. Accepted for review shall mean that the plan is a complete submission and contains all the information

required by the Zoning Ordinance or Subdivision Ordinance at the time of submission. Any plan determined incomplete will not be accepted for review.

This proposed "grandfathering" language is contained in proposed Ordinance No. 03-44 and would apply in addition to the normal vesting provisions for Site Plans and Subdivision Plans contained in Section 24.1-805 of the Zoning Ordinance.

Planning Commission Recommendation

The Planning Commission considered this application at a work session on October 29 and at its regular meeting on November 12, 2003. Subsequent to conducting a duly advertised public hearing, at which there were no speakers, the Commission voted 6:0 to recommend approval of the amendments contained in proposed Ordinance No. 03-44.

County Administrator Recommendation

The majority of the amendments proposed in this application are mandatory in order to bring the County's Chesapeake Bay provisions into conformance with the regulations adopted by the Chesapeake Bay Local Assistance Board. These changes will impose additional requirements on some of the County's landowners. The County is required by State law to implement the Chesapeake Bay Preservation Area requirements as adopted by CBLAB, and these amendments will do so. In addition to impacts on property owners, these required changes will increase demands on the County staff charged with administering the Chesapeake Bay programs and will likely result in requests for additional staff resources. Nevertheless, the County has no choice but to comply with the State regulations.

The deadline for local ordinance compliance established by CBLAB is December 31, 2003, and up until the date of this memorandum, I had been prepared to recommend adoption of the proposed amendments contained in Ordinance No. 03-44 and the supplementary policy guidelines contained in proposed Resolution R03-192 with an effective date of January 1, 2004. However, staff was informed today by Mr. Donald Davis, Chairman of the Chesapeake Bay Local Assistance Board, that further policy discussions will be held at CBLAB's December 8, 2003 meeting and that those discussions could have an impact on the content and/or interpretation of the regulations that we are attempting to address. Accordingly, based on this new information, I recommend that the Board conduct the public hearing (which has already been advertised) and then table consideration of this application until staff can obtain further information and direction as to CBLAB's intent. Staff was informed by Mr. Davis that localities that are working in good faith to comply with the adoption directive will not be cited for missing the deadline. I trust that delaying action while awaiting further clarification will be recognized as a good faith action.

Carter/3337
Attachments

- Excerpt – Planning Commission Minutes - October 29, 2003 Work Session

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- Excerpt – Unapproved Planning Commission Minutes – November 12, 2003 Meeting
- Summary of Regulation Changes and Proposed Amendments
- Diagram of Chesapeake Bay Preservation Area components
- Proposed Buffer Guidelines
- Proposed Resolution R03-192
- Proposed Ordinance No. 03-44